

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

EDWARD DALON, SURVIVING SPOUSE
AND ADMINISTRATOR OF THE ESTATE OF
JUDY L. DALON, DECEASED

PLAINTIFF

v.

CIVIL ACTION NO. 4:15-CV-086-DMB-JMV

RULEVILLE NURSING AND
REHABILITATION CENTER, LLC

DEFENDANT

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Ruleville Nursing and Rehabilitation Center, LLC ("Ruleville") files this Notice of Removal of the civil action styled *Edward Dalon, Surviving Spouse and Administrator of the Estate of Judy L. Dalon, Deceased v. Ruleville Nursing & Rehabilitation Center*; Civil Action No. 2015-0134, from the Circuit Court of Sunflower County, Mississippi, to the United States District Court for the Northern District of Mississippi, Greenville Division. In support of this Notice, Ruleville states the following:

1. Plaintiff Edward Dalon filed this medical negligence action on June 2, 2015. The lawsuit arises out of the care and treatment provided to Judy Dalon while a resident of Ruleville Nursing and Rehabilitation Center, LLC. According to the Complaint, Judy Dalon suffered injuries and death as a result of Ruleville's alleged negligence.

2. Plaintiff served Ruleville with a copy of a Summons and Complaint on June 16, 2015. *See* Exhibit A.¹ In the Complaint, Plaintiff asserts claims of negligence and wrongful death against the Defendant. Plaintiff contends that Defendant's alleged acts and/or omissions caused "severe personal injuries" and the death of Judy Dalon. Complaint at ¶ 31.

3. This removal is timely because Ruleville filed this Notice of Removal within thirty days of June 16, 2015, when the Plaintiff served Ruleville with its Summons. *See* 28 U.S.C. § 1446(b).

4. The Court has diversity jurisdiction over this matter under 28 U.S.C. § 1332 because (1) the amount in controversy exceeds \$75,000.00, exclusive of costs and interest, and (2) there is diversity of citizenship between the Plaintiff and Ruleville.

5. It is apparent that the amount in controversy requirement is met because Plaintiff seeks damages for the wrongful death of Judy Dalon. *See De Aguilar v. Boeing Co.*, 11 F.3d 55, 57 (5th Cir. 1993) (finding complaint for wrongful death to be facially apparent for damages exceeding amount-in-controversy requirement). Plaintiff also seeks damages for "severe personal injuries," pain and suffering, severe emotional distress, funeral expenses, and the cash value of the decedent's life expectancy. *See Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 883 (5th Cir. 2000) (holding that it was facially apparent from the plaintiff's complaint that the amount in controversy was satisfied where the plaintiff alleged damages for mental anguish, suffering, loss of wages, and medical expenses). Moreover, Plaintiff seeks damages for loss of consortium.

6. Diversity of citizenship exists because the Plaintiff alleges to be a citizen of Mississippi, and Ruleville is not a citizen of Mississippi. Compl. at ¶ 1. As set forth in detail below, Ruleville Nursing and Rehabilitation Center, LLC, is a Mississippi limited liability company whose members are all citizens of the State of New York. Therefore, Ruleville is a citizen of New York, not Mississippi. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008) (holding that the citizenship of an LLC is that of all its members).

¹ Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons served on Ruleville is included in Exhibit A.

7. Ruleville Nursing and Rehabilitation Center, LLC's members are D&N, LLC, and DTD HC, LLC. D&N, LLC, and DTD HC, LLC, are New York limited liability companies. D&N, LLC's members are Norbert A. Bennett, the Norbert A. Bennett Children's Trust, and the Norbert A. Bennett Grand-Children's Trust. Mr. Bennett is a citizen of New York. The trustee of the Norbert A. Bennett Children's Trust is Ronald Bennett, a citizen of New York, and the trustee of the Norbert A. Bennett Grand-Children's Trust is also Ronald Bennett. *See Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397 n. 6 (5th Cir. 2009) (citing *Navarro Savs. Ass'n v. Lee*, 446 U.S. 458, 464 (1980) (holding that the citizenship of a trust is that of its trustee)).

8. DTD HC, LLC's members are Donald T. Denz and the Donald T. Denz Irrevocable Trust. Mr. Denz is a resident and citizen of the State of New York. The trustee of the Donald T. Denz Irrevocable Trust is Martin J. Clifford, a citizen of New York.

9. For these reasons, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, and removal is proper under §§ 1441 and 1446.

10. Venue is proper in the United States District Court for the Northern District of Mississippi, Greenville Division, because that is the district in which the state court action was filed. *See* 28 U.S.C. §§ 1446(a), 104(a)(3).

11. In accordance with 28 U.S.C. § 1446(d), Sunflower County Circuit Court and Plaintiff's counsel have been given written notice of the filing of this Notice of Removal. *See* Exhibit B.

WHEREFORE, Ruleville Nursing and Rehabilitation Center, LLC, requests that the above-captioned action now pending in Sunflower County Circuit Court be removed to the United States District Court for the Northern District of Mississippi, Greenville Division, and that the District Court assume jurisdiction over this lawsuit.

This the 7th day of July, 2015.

Respectfully submitted,

RULEVILLE NURSING AND
REHABILITATION CENTER, LLC

By Its Attorneys,

BAKER DONELSON BEARMAN
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By: s/ Clay Gunn
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CERTIFICATE OF SERVICE

I hereby certify that I have mailed the foregoing *Notice of Removal* via U.S. mail, postage prepaid, to the following counsel of record:

David E. Goodman, Jr. (MSB No. 100365)
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COUNSEL FOR PLAINTIFF

This the 7th day of July, 2015.

s/ Clay Gunn
CLAY GUNN